

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OLYMPUS CORPORATION, OM DIGITAL SOLUTIONS CORPORATION,
FUJIFILM CORPORATION, FUJIFILM NORTH AMERICA CORPORATION,
NIKON CORPORATION, PANASONIC ENTERTAINMENT &
COMMUNICATION CO., LTD.,

Petitioners

v.

OPTIMUM IMAGING TECHNOLOGIES LLC,

Patent Owner

Case IPR2024-01220

Patent No. 10,873,685

PATENT OWNER'S REQUEST FOR REHEARING

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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<u>PATENT OWNER'S LIST OF EXHIBITS</u>	
EX. 2001	Claim Construction Memorandum Opinion and Order, <i>Optimum Imaging Technologies LLC v. Canon Inc.</i> , No. 2:19-cv-00246-JRG, Dkt. 88 (E.D. Tex. June 11, 2020)
EX. 2002	U.S. Patent No. 7,612,805 (“the ’805 Patent”)
EX. 2003	U.S. Patent No. 8,451,339 (“the ’339 Patent”)
EX. 2004	Scheduling Order, <i>Optimum Imaging Technologies LLC v. Olympus Corporation et al.</i> , No. 4:23-cv-00924-ALM, Dkt. 41 (E.D. Tex. Oct. 2, 2024)
EX. 2005	Patent Owner Preliminary Response, IPR2024-00923, Paper 7 (PTAB Aug. 29, 2024)
EX. 2006	Order, <i>Panasonic Entertainment & Communication Co., Ltd. v. Optimum Imaging Technologies LLC</i> , No. 3:24-cv-02466, Dkt. 47 (N.D. Cal. Sep. 23, 2024)
EX. 2007	Order Governing Proceedings, <i>Optimum Imaging Technologies LLC v. Panasonic Corp. et al.</i> , No. 4:23-cv-00926, Dkt. 35 (E.D. Tex. Jan. 14, 2025)
EX. 2008	Order modifying Scheduling Order, <i>Optimum Imaging Technologies LLC v. Olympus Corporation, et al.</i> , No. 4:23-cv-00924-ALM, Dkt. 51 (E.D. Tex. Jan. 31, 2025)
EX. 2009	Order granting Joint Motion to Modify Scheduling Order, <i>Optimum Imaging Technologies LLC v. Olympus Corporation, et al.</i> , No. 4:23-cv-00924-ALM, Dkt. 57 (E.D. Tex. Feb. 14, 2025)
EX. 2010	Letter from Texas Secretary of State, <i>Optimum Imaging Technologies LLC v. Fujifilm Corp.</i> , No. 4-23-cv-00922-ALM, Dkt. 14 (E.D. Tex. Feb. 20, 2024)

EX. 2011	Mediator's Report, <i>Optimum Imaging Technologies LLC v. Olympus Corporation, et al.</i> , No. 4:23-cv-00924-ALM, Dkt. 71 (E.D. Tex. March 10, 2025)
EX. 2012	Printout of Website titled "History of Panasonic Holdings Corporation" accessed at https://holdings.panasonic/global/corporate/phd/history.html on March 7, 2025
EX. 2013	Printout of Website titled "Founding of Olympus" accessed at https://www.olympus-global.com/company/milestones/founding.html on March 7, 2025

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d)(1), Patent Owner respectfully submits this request for rehearing of the institution decision (Paper 13).

First, because of the express change in USPTO policy, Patent Owner respectfully requests the Board reconsider exercising its discretion to deny institution in view of parallel district court litigations.

Second, because it appears that the Board misapprehended and/or overlooked Patent Owner's arguments regarding Iwasawa, Patent Owner respectfully requests the Board reconsider its preliminary findings on claim 1.

II. BACKGROUND

On October 18, 2023, Patent Owner filed complaints for infringement of, *inter alia*, the '685 Patent in the following district court litigations with Petitioners: (1) *Optimum Imaging Technologies LLC v. Olympus Corporation, et al.*, No. 4:23-cv-00924 (E.D. Tex.)("Olympus Litigation"); (2) *Optimum Imaging Technologies LLC v. FUJIFILM Corp.*, No. 4:23-cv-00922 (E.D. Tex.)("Fujifilm Litigation"); (3) *Optimum Imaging Technologies LLC v. Nikon Corp.*, No. 4:23-cv-00923 (E.D. Tex.)("Nikon Litigation"); (4) *Optimum Imaging Technologies LLC v. Panasonic Corporation, et al.*, No. 4:23-cv-00926 (E.D. Tex.)("Panasonic Litigation")¹.

¹ Panasonic Entertainment & Communication Co., Ltd. filed a declaratory

On August 29, 2024, the instant petition against the ‘685 Patent was filed. On January 13, 2025, the Preliminary Response was filed. On February 24, 2025, the Board instituted trial in this IPR.

On February 28, 2025, the USPTO rescinded the June 21, 2022, memorandum entitled “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” (Memorandum).

III. THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY INSTITUTION IN VIEW OF PARALLEL DISTRICT COURT LITIGATIONS

Patent Owner respectfully submits that discretionary denial under § 314 was addressed in the Preliminary Response. Paper 10 at 1-2. As noted by the Board, “Patent Owner request[ed] we deny institution due to the pendency of related district court proceedings for each of the parties collectively identified above as Petitioner.” Paper 13 at 7. However, the Board stated: “In view of Petitioner’s stipulation and the Director’s guidance, we deny Patent Owner’s request for discretionary denial due to the related district court cases.” Paper 13 at 8.

judgment action in N.D. Cal. which was transferred to E.D. Tex. under the first-to-file rule. *See* EX. 2006 at 10. In the Panasonic Litigation, a management conference is currently set before Judge Mazzant in E.D. Tex. on 3/17/2025. *See* EX. 2007 at 1.

Patent Owner respectfully submits that the change in USPTO policy, specifically the rescission of the Memorandum, justifies reconsideration of the institution decision. With this change in USPTO policy, the Board's failure to substantively consider discretionary denial in view of parallel district court litigations represents an abuse of discretion.

Patent Owner further respectfully submits that the *Fintiv* factors favor the Board exercising its discretion to deny institution in this IPR. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”). Consistent with the arguments in the Preliminary Response, instituting this IPR would not be an efficient use of the Board's resources. The final pre-trial conference will occur long before a final written decision would be expected in this IPR. The parallel litigations involving the same parties and overlapping claims will resolve the issues in this IPR.

A. GOOD CAUSE EXISTS FOR ADMITTING EXS. 2006-2013

This request is supported by EXS. 2006-2013 and there is good cause for admitting these exhibits at least because each of these exhibits is highly relevant to the Board's analysis of the *Fintiv* factors, as discussed in detail below. Admitting these exhibits furthers the policy objectives of *Fintiv* including efficiency, fairness,

and integrity of the patent system.² The USPTO has acknowledged that new evidence may be admitted in cases addressing intervening changes in USPTO policy.³ Such is the case here. Denying these exhibits would prejudice Patent Owner because Patent Owner will have to defend the ‘685 Patent and expend resources for a trial that should not have been instituted.

B. THE *FINTIV* FACTORS FAVOR DENIAL

1. Factor 1 favors denial

Olympus previously filed an opposed motion to stay the Olympus Litigation. However, Olympus’ motion is now moot. On March 8, 2025, Patent Owner and Olympus conducted a mediation and the Olympus Litigation is now settled in principle. EX. 2011.

No other petitioner in this IPR has filed a motion to stay its respective litigation. Patent Owner would oppose any such motion. The outcome of any such motion is speculative.

Also, there is no evidence that Judge Mazzant would stay the parallel litigation(s). There are four asserted patents, including the ‘685 Patent, at issue in

² Additionally, at least EXS. 2007-2011 were not available at the time of filing the Preliminary Response on 1/13/2025.

³ <https://www.uspto.gov/patents/ptab/decisions/director-review-process>

the parallel litigations. According to DocketNavigator, Judge Mazzant has only ever granted one opposed motion to stay, post-institution, where the plaintiff/patent owner itself filed the motion regarding its own infringement action. *OnPoint Systems, LLC v. Protect Animals With Satellites, LLC*, No. 4:20-cv-657- ALM, Dkt. 115 (E.D. Tex. July 12, 2022). Therefore, even post-institution, a stay is highly unlikely. Accordingly, factor 1 favors denial.

2. Factor 2 favors denial

The final pretrial conference in the parallel litigations is currently set for November 6, 2025. EX. 2009.⁴ This conference will occur **over 3.5 months** before a final written decision would be expected in this IPR on February 24, 2026.⁵

⁴ Five pending litigations are on the same schedule for pre-trial purposes. *See also infra*, notes 1 and 7. The Court *sua sponte* modified the Scheduling Order on 1/31/2025 and set the final pretrial conference for 11/6/2025. EX. 2008. The Court granted a joint motion to modify the Scheduling Order on 2/14/2025 and the final pretrial conference remains set for 11/6/2025. EX. 2009.

⁵ According to DocketNavigator, Judge Mazzant's final pretrial conference typically occurs 1-3 weeks before Trial Day 1. *See, e.g.*, Mazzant Case Nos. 4:20-cv-886, 4:08-cv-451, 4:18-cv-cv-469, 4:18-cv-474, 4:15-cv-766. Thus, Trial Day 1 is expected to occur approx. 3 months before a final written decision in this IPR.

Additionally, as discussed herein, a stay of the parallel litigations is unlikely and there will have been significant investment by the parties and the court by November 2025, let alone by February 2026. Accordingly, factor 2 favors denial.

3. Factor 3 favors denial

With the final pretrial conference set for November 6, 2025, the parties will have completed much of the work associated with trial. This work includes claim construction briefing with a claim construction hearing set for March 27, 2025, fact discovery which closes April 18, 2025⁶, expert discovery which closes on June 27, 2025; dispositive motions due July 11, 2025; and other pretrial submissions due by October 17, 2025 in preparation for the final pretrial conference. EX. 2009.⁷

Petitioners did not act promptly in filing the petition – over ten months elapsed between the filing of the complaint and the filing of the petition in this IPR. As noted above, the complaints in the parallel litigations were filed on

⁶ It is additionally noted that fact discovery including depositions of foreign witnesses requires international travel to the embassy in Japan, with reservations beginning 3/17/2025, which is a significant expenditure for all parties.

⁷ The Panasonic Litigation is on a delayed schedule due to Panasonic's misguided declaratory judgment action in N.D. Cal. which continues to cause extreme prejudice to Patent Owner. Panasonic should not be rewarded.

10/18/2023. Panasonic admits awareness of the complaint “shortly” after the complaint was filed in the Panasonic Litigation. EX. 2006 at 5. The other petitioners have not yet admitted when they actually became aware of the complaints.

The complaints were provided to the Texas Secretary of State for service on 10/30/2023. *See, e.g.*, EX. 2010 at 2. Fujifilm sent a signed return receipt that was received by the Texas Secretary of State on 1/8/2024. *Id.* Fujifilm was thus aware of the complaint in the Fujifilm Litigation at least by January 2024.

With authorization from the district court, Patent Owner proceeded with service through the Hague Convention on 1/19/2024, which was completed for most petitioners in May 2024.⁸ Patent Owner believes that all petitioners were aware of the filed complaints long before Hague service was complete.

Petitioners were aware of prior art references long before the petition was filed in this IPR. Below, Patent Owner addresses exemplary citations of five relied-upon references in this IPR.

First, Iwasawa (EXS. 1005, 1014) was originally assigned to Matsushita Electric Industrial Co., Ltd., which changed its name to Panasonic Corp. in

⁸ Hague service for Panasonic was completed in October 2024. However, as noted above, Panasonic admitted knowledge of the complaint much earlier.

October 2008. EX. 2012.⁹ Additionally, Iwasawa is cited by US7538806 which issued 5/26/2009 and is assigned to Panasonic Corp. Iwasawa is also cited by US8018506 which issued 9/13/2011 and is assigned to Fujifilm Corp.

Second, Enomoto (EX. 1006) is cited on the face of the '685 Patent at issue in this IPR. Additionally, Enomoto is cited by US11061200 which issued 7/13/2021 and is assigned to Fujifilm Corp.

Third, Ito (EXS. 1007, 1015) is cited by US7667738 which issued 2/23/2010 and is assigned to Nikon Corp.

Fourth, the divisional of Prilutsky (EX. 1008) is cited by US8587658 which issued 11/19/2013 and is assigned to Nikon Corp.

Fifth, Miyazawa (EX. 1009) was originally assigned to Olympus Optical Co., Ltd. which changed its name to Olympus Corp. in October 2003. EX. 2013. Miyazawa is also cited by US7598991 which issued 10/6/2009, US7853097 which issued 12/14/2010, and US8269880 which issued 9/18/2012, all which are assigned to Nikon Corp.

In view of the foregoing, Petitioners were aware of these prior art references

⁹ Panasonic Corp. became Panasonic Holdings Corp. in April 2022. EX. 2012. Panasonic Entertainment & Communication Co., Ltd. is part of Panasonic Holdings Corp. *Id.*

at least by 2021, long before the petition was filed in this IPR. There is no evidence regarding when/how Petitioners conducted a prior art search with reasonable diligence and Petitioners cannot otherwise explain how their actions show “promptness” over the course of the elapsed ten months. Accordingly, factor 3 favors denial.

4. Factor 4 favors denial

Petitioners challenge claims 1-30 of the ‘685 Patent in this IPR. Patent Owner originally asserted claims 1-30 of the ‘685 Patent in the parallel district court litigations. Paper 10 at 2. Following a court ordered reduction of asserted claims on 1/21/2025, Patent Owner now asserts claims 1, 2, 4, 6, 14, and 20 of the ‘685 Patent. Claims 1, 6, and 14 are independent. Paper 10 at 5. **It would not be efficient to proceed with trial in this IPR because the district court will resolve validity of enough overlapping claims to resolve key issues in the petition.**

Fintiv at 13.¹⁰

Though Petitioners filed *Sotera*-style stipulations, this only moderately weighs in favor of granting institution under the circumstances. At the time of the institution decision on 2/24/2025, Petitioners relied on the same references and

¹⁰ For example, the additional limitations of claims 7 and 15 are similar to claim 2, the additional limitations of claims 8 and 16 are similar to that of claim 4, etc.

grounds at issue in this IPR in their invalidity contentions.¹¹ Petitioners also relied on system art and so even if the stipulation is in effect, the validity of the ‘685 Patent will necessarily be evaluated in the district court litigations. Conducting parallel proceedings on patents/publications and systems is not efficient. Petitioners should not be given multiple bites at the invalidity apple.¹²

Moreover, Defendants Samsung Electronics Co., Ltd., *et al.* have not filed any IPR challenging the ‘685 Patent and may pursue the same grounds of invalidity at issue in this IPR in district court litigation.

Accordingly, factor 4 favors denial or is at minimum, neutral.

¹¹ The invalidity contentions are voluminous with a cover document totaling 86 pages and 18 charts for the ‘685 Patent totaling 2,865 pages. The Board has expressed concern with submitting such large exhibits. *See, e.g., DISH Network L.L.c. v. Broadband iTV, Inc.*, No. IPR2020-01280, Paper 29 (PTAB April 1, 2021). With candor, Patent Owner represents that Petitioners explicitly incorporated the references and grounds in this IPR in their contentions.

¹² On 2/27/2025, Olympus, Fujifilm, and Nikon served their preliminary election of asserted prior art against the ‘685 Patent, which is different for each petitioner. In sum, there are 12 systems and 9 patents/publications, including Iwasawa, Enomoto, Ito, and Prilutsky at issue in this IPR.

5. Factor 5 favors denial

The same parties are involved in this IPR and the district court litigations. Accordingly, factor 5 favors denial.

6. Factor 6 favors denial

The merits of the petition are weak. Paper 10 at 13-25. In the Institution Decision, the Board only evaluated claim 1 of the ‘685 Patent and alleged obviousness over Iwasawa. Paper 13 at 19-24.¹³ The Board did not evaluate Patent Owner’s arguments regarding, for example, the proposed combination of Iwasawa and Enomoto. Paper 10 at 22-24. Ultimately, conducting this trial and evaluating 30 claims over ten grounds is extremely burdensome for the parties and the Board. For at least the reasons discussed herein, conducting this trial would not be a good use of the Board’s resources.

Additionally, as discussed in the Preliminary Response (Paper 10 at 2-3), the

¹³ As discussed below, Patent Owner respectfully submits that the Board misapprehended and/or overlooked arguments in the Preliminary Response. As it relates to the merits, the arguments below are incorporated herein for factor 6.

Board is already evaluating the validity of the ‘685 Patent in IPR2024-00923.¹⁴ As further explained in the recently filed Patent Owner Response in IPR2024-00923, there is strong evidence of secondary considerations in view of the prior Canon Litigation.¹⁵ There is additional evidence now in view of the settlement in the Olympus Litigation. *See* EX. 2011.

Accordingly, factor 6 favors denial.

7. On balance, the factors favor denial

None of the *Fintiv* factors favor grant and instead, each of the six *Fintiv* factors favors denial or is at minimum, neutral. Denial of institution in this IPR best serves efficiency and integrity of the system. *Fintiv* at 6. As discussed above, the final pretrial conference is set, and trial is expected, at least three months before a final written decision in this IPR. By November 2025, the parties and the court will have invested substantially in the district court litigations and in preparation for trial.

¹⁴ In IPR2024-00923, the petitioner submitted a *Sotera*-style stipulation and the institution decision was entered prior to the change in USPTO policy. Patent Owner reserves all rights regarding the institution decision in IPR2024-00923.

¹⁵ *Optimum Imaging Technologies LLC v. Canon Inc.*, No. 2:19-cv-00246-JRG, (E.D. Tex.) (“Canon Litigation”).

**IV. THE BOARD MISAPPREHENDED AND/OR OVERLOOKED
PATENT OWNER’S ARGUMENTS REGARDING THE COMBINED
IID OF IWASAWA**

In the Preliminary Response, Patent Owner argued that a person ordinarily skilled in the art (“POSA”) would not have been motivated to combine the first and second embodiments of Iwasawa as proposed by Petitioners. Paper 10 at 14-22. Patent Owner respectfully submits that the Board’s findings regarding alleged obviousness over Iwasawa represent an abuse of discretion.

In the Institution Decision, the Board preliminarily disagreed with Patent Owner’s alleged “economic arguments” regarding the proposed combination. Paper 13 at 17-19. Patent Owner respectfully submits that the arguments (*e.g.*, power-requirements, battery life, number and size of circuits) are not purely economic considerations for businessmen, but rather considerations for technological compatibility and feasibility. Patent Owner’s arguments directly relate to whether a POSA **would have** made the proposed combination, not just whether a POSA **could have** done so. *Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (explaining that obviousness requires evidence showing that a skilled artisan not only could have made but would have been motivated to make the combination). As discussed in the Preliminary Response, Petitioners fail to establish that a POSA **would have** made the Combined IID.

Also, as argued in the Preliminary Response, Petitioners fail to explain how

the Combined IID would work and therefore Petitioners fail to meet their burden.

Personal Web Techs., LLC v. Apple, Inc., 848 F.3d 987, 994 (Fed. Cir. 2017)

(explaining the need for evidence showing how the combination is supposed to work). For example, Patent Owner noted that “Iwasawa does not disclose any way to determine whether to use RAM 208 versus ROMs 107-109.” Paper 10 at 16.¹⁶

Petitioners do not explain how the Combined IID would make such a determination either. *Id.*; *see also* Paper 10 at 19-20.

The Board preliminarily found that “[s]toring pre-calculated correction data for known lenses in ROM would be faster than calculating such data at execution time and storing it in RAM, but calculating the correction data at execution time and storing it in RAM would be useful for performing new corrections for new lenses or updating the corrections for known lenses.” Paper 13 at 18. **There is no explanation in the petition regarding how the Combined IID would make the determination regarding using RAM 208 versus ROMs 107-109, with or**

¹⁶ In the first embodiment IID, Iwasawa teaches the use of ROM data switcher 110 to select the “optimal shading correction data”. Paper 10 at 11 (citing EX. 1005 at [0016]). However, the Board noted that the Combined IID need not include ROM data switcher 110. Paper 13 at 19. In the second embodiment IID, “[t]here is no selection of RAM 208 using the control signal.” Paper 10 at 17

without ROM data switcher 110, to achieve this alleged benefit. Paper 10 at 14.

The Board overlooked Patent Owner’s arguments explaining that the CPU 206 would still calculate the shading correction data based on the control signal in the Combined IID. Paper 10 at 18. To the extent that Petitioners argue that the CPU 206 could calculate correction data “as necessary” (Paper 1 at 8), **Petitioners do not describe how Iwasawa would be modified to accomplish doing so.** Paper 10 at 18. For example, the petition does not address how the program in CPU 206 would be modified or what factors would determine whether the CPU 206 performs its own calculation or uses prestored correction data in ROMs 107-109. Paper 10 at 18-20.¹⁷ Petitioners cannot rely on the Board to gap-fill the petition.

For at least these reasons, Petitioners fail to meet their burden and the Board misapprehended and/or overlooked Patent Owner’s arguments.

V. CONCLUSION

For at least these reasons, Patent Owner respectfully requests reconsideration of the Board’s institution decision.

¹⁷ As explained in the Preliminary Response, the prestored programs in CPU 206 and the prestored data in ROMs 107-109 both correspond to existing lenses. Paper 10 at 15-16. To account for new lenses, the programs would need to be updated before image capture. *Id.*

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This paper is within the 15 page-limit, in compliance with 37 C.F.R. § 42.24(a)(1)(v).

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies the PATENT OWNER'S REQUEST FOR REHEARING and all exhibits thereto were served on the undersigned date via email, as authorized by Petitioners, at the following email addresses:

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